

# DEFENSE AND EMPLOYEE LABOR RELATIONS SYMPOSIUM



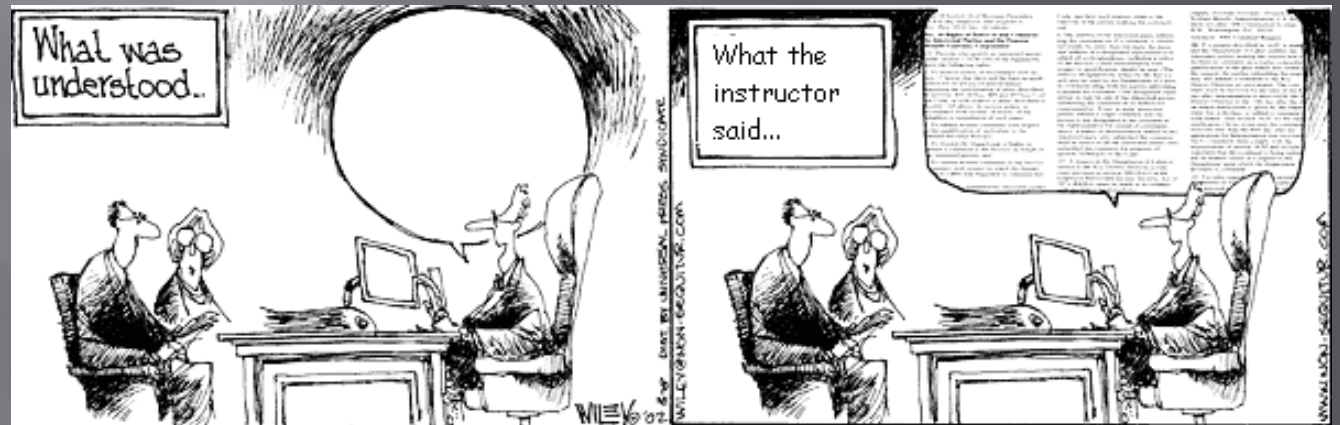
Intermediate/ Advanced Employee Relations:  
Discovery, Witness and Evidence Preparation

Presented by: Phillis Morgan and Heather Masten  
Air Force Legal Operations Agency



# Agenda

- ▣ Overview
- ▣ Forums in Which we Work
- ▣ EMR's Role
- ▣ Witnesses
- ▣ Evidence
- ▣ Discovery
- ▣ Errors
- ▣ Settlements
- ▣ Motions Practice





# Third Party Proceedings

- ▣ Merit System Protection Board (MSPB)
- ▣ Equal Employment Opportunity Commission (EEOC)
- ▣ Office of Special Counsel (OSC)
- ▣ Federal Labor Relations Authority (FLRA)
- ▣ Civil Personnel Management Service (CPMS)  
Investigations and Resolutions Division (IRD)
- ▣ Dept of Labor: OWCP, FLSA, USERRA



# Common Forums

- ❑ Investigations (ex. IRD, informal EEO)
- ❑ Administrative Hearings (ex. EEOC, MSPB, unemployment compensation)
- ❑ Arbitration and Grievances
- ❑ ADR, Settlement, or Mediation





# EMR's Role





# EMR's Role



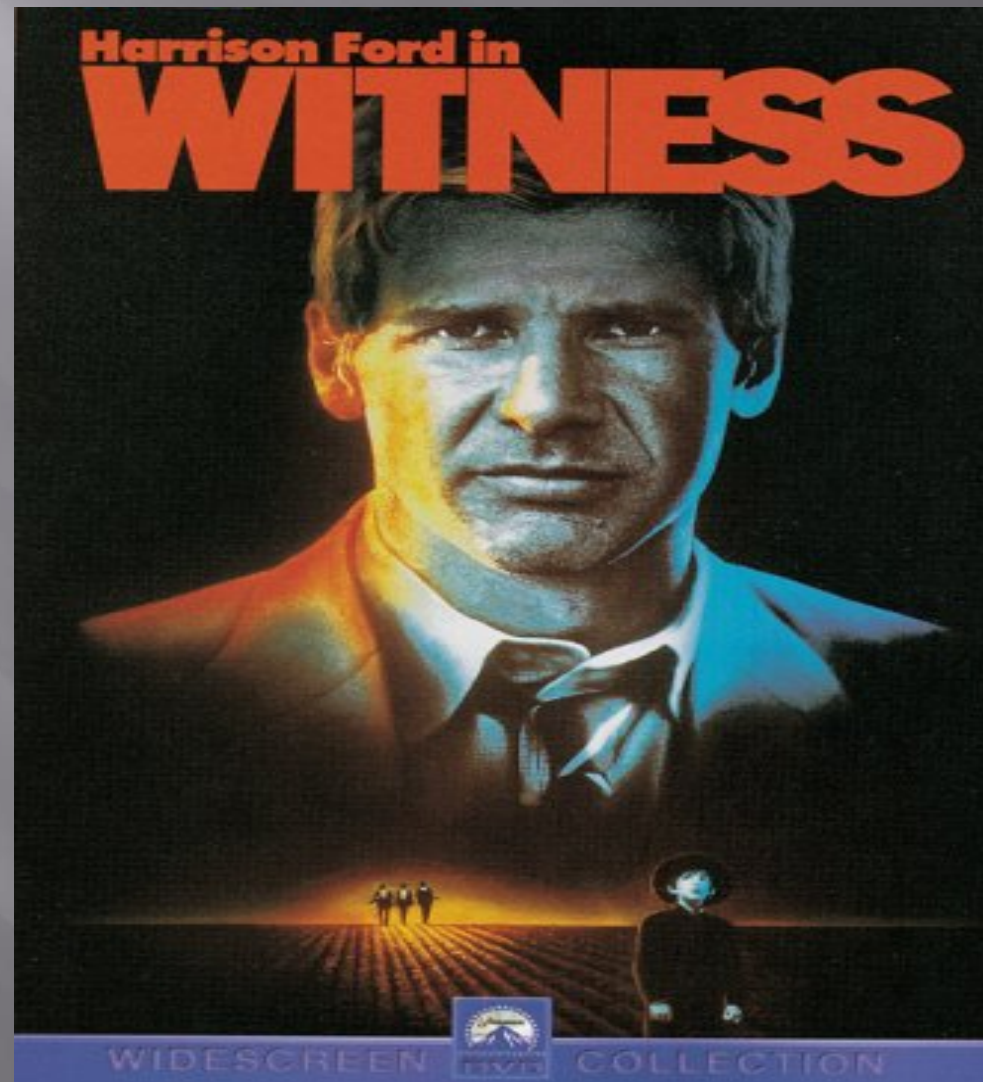
- ▣ Technical Advisor to Lawyers on HR process, regulations
- ▣ Gather and Preserve Evidence
- ▣ Assist with Identification of Witnesses
- ▣ Assist with Thinking Outside the Box for Settlement Options







# Witnesses





# Witnesses

- ▣ Identify and Locate
- ▣ Travel Arrangements
- ▣ Union Notification Requirements
- ▣ Assurances/Warnings





# Identification of Witnesses



"That's him, all right... only taller,  
younger and thinner!"



# Locating Witnesses





# Arranging Witness Travel







# Union Notification

<i>Pay no charges to messenger</i>		NAME OF ADDRESSEE	Stef Leak	<i>For quick service, reply by bearer</i>	
		STREET ADDRESS	On bicycle going fast		
		CITY, PROV	Toronto		
		URGENT: DELIVER WITHOUT DELAY			
RECEIVER'S NUMBER 9285472		<b>TELEGRAM</b> <i>The World Wide Electrical Printing Telegraph Co. Ltd.</i>			
DATE SEP 29 2007					
TIME FILED 5:45 P.M.		This is a full-rate telegram or electric lettergram unless its deferred character is indicated by a suitable symbol above or preceding the address. The filing time shown in the date line on telegrams and cablegrams is STANDARD TIME at point of origin.			
CHECK WORD COUNT, SYMBOLS					
SENDING STATION: PARIS, FRANCE		SYMBOLS: DL-DAY LETTER NL-NIGHT LETTER LC-DEFERRED CABLE NLT-CABLE NIGHT LETTER SR-SHIP RADIOGRAM			
MESSAGE GOES HERE. BE BRIEF.					
Urgent STOP New Remantics discovered STOP Send poetry and drawings STOP Survival depends on it STOP Gratefully END					
D.H. Lawrence					
THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS REGARDING ITS SERVICE					



# Employee Assurances and Warnings





# Employee Assurances and Warnings

- ▣ Weingarten
- ▣ Brookhaven
- ▣ Kalkines
- ▣ Garrity





# Evidence

- ▣ Preservation
- ▣ Following an Established File Plan?
- ▣ Foundation (Business Records)
- ▣ Witness Statements
- ▣ Litigation Holds and E-Discovery
- ▣ “Best Evidence”





# The EEO Foundation

**OFO/FC**

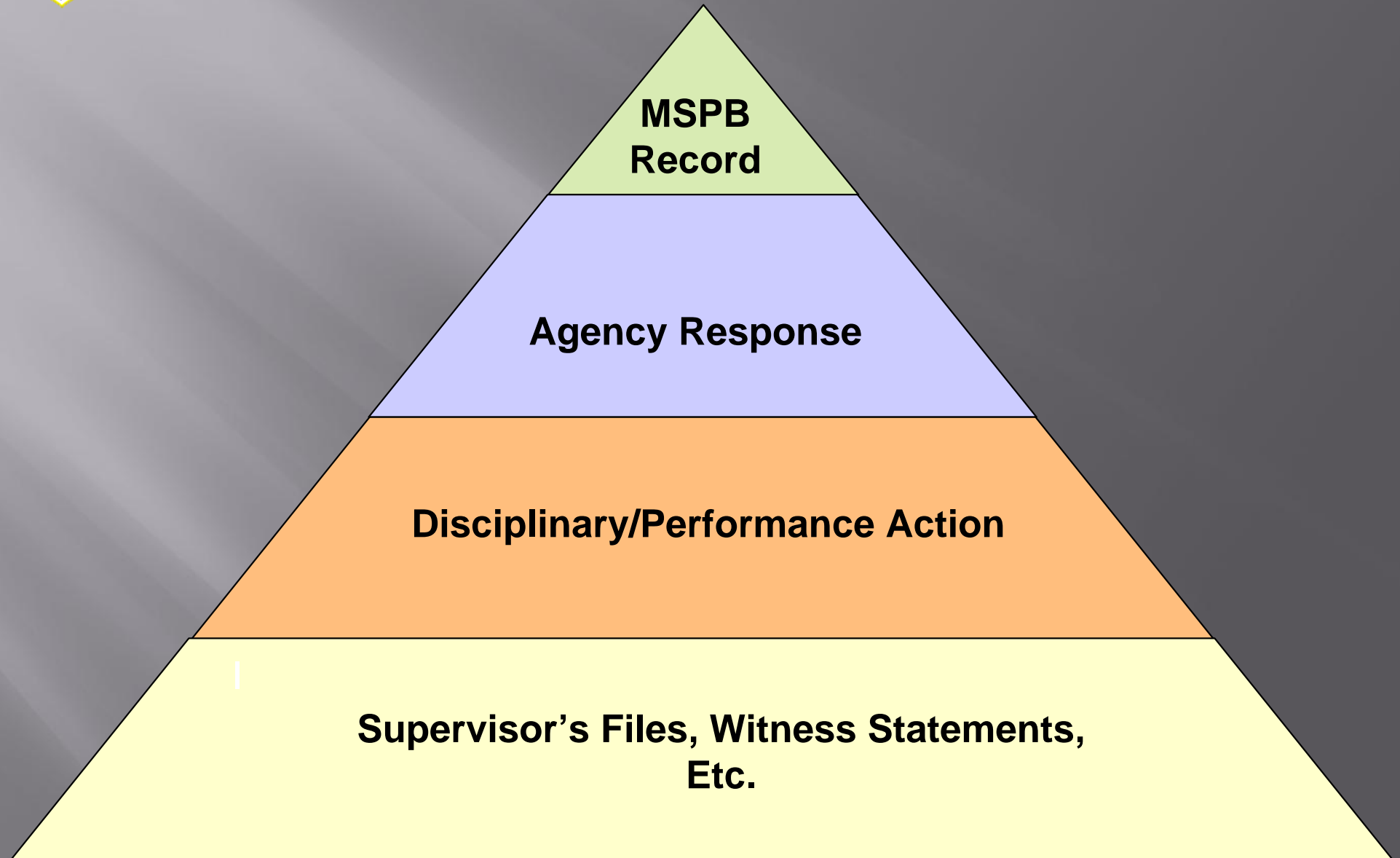
**EEOC Hearing**

**Report of Investigation (Formal)**

**EEO Counselor's Report (Informal)**

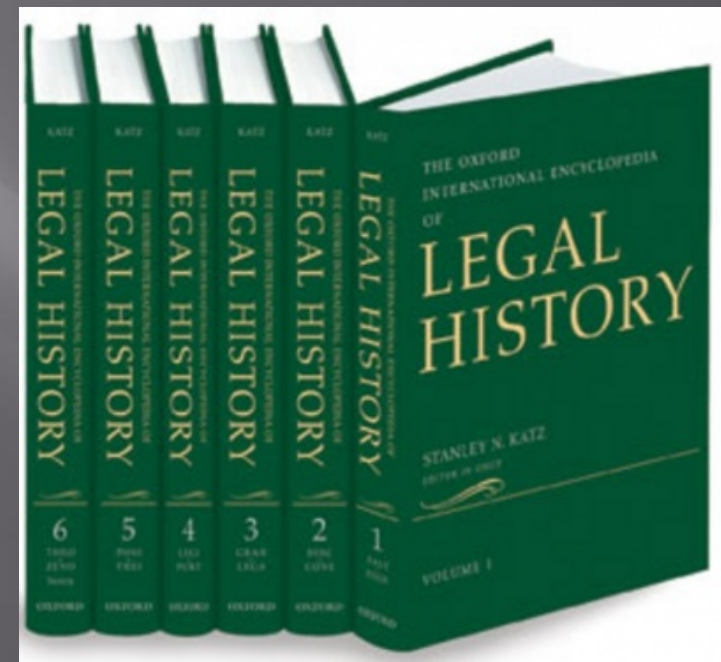
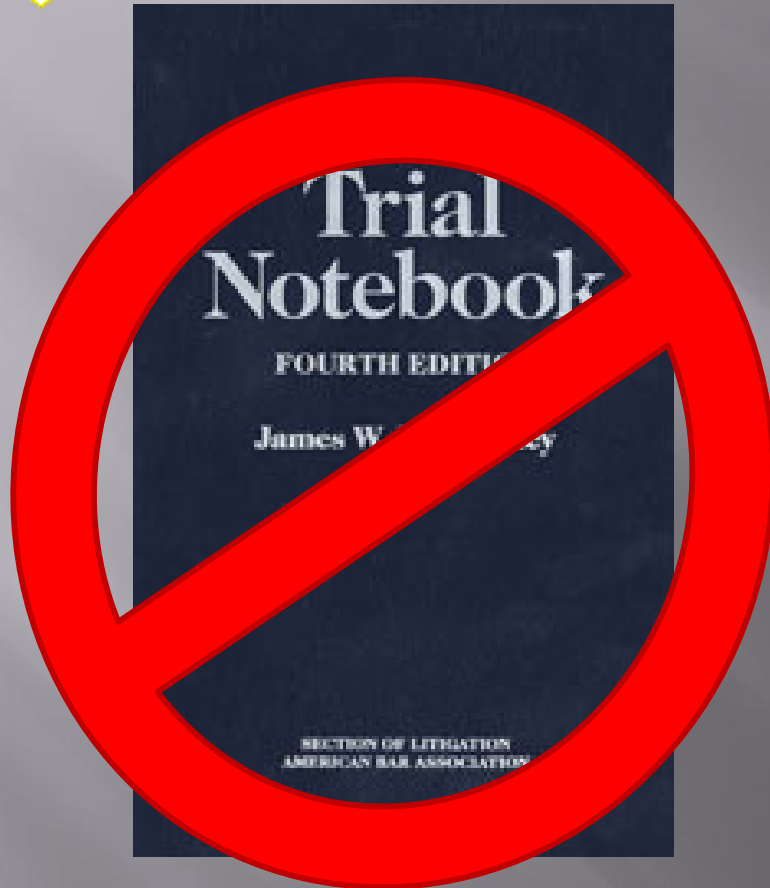


# The MSPB Foundation





# File Integrity





# Discovery, Document Production, Scheduling





# Discovery, Document Production, Scheduling

- ▣ How the rules in different forums affect when and how we must respond
- ▣ Considerations on how we respond
- ▣ Electronic discovery challenges
- ▣ Consequences of improper responses





# Developing the Investigation



**Don't be just another fly on the wall!**



# Developing the Investigation

Provide additional documentation



Preserve notes



# Errors





# Common Errors

- ❑ Missing Deadlines
- ❑ Fail to Notify Employee of Procedural Rights/Process
- ❑ Not Following Procedures
- ❑ Denying Official Time
- ❑ Not Giving Employee Opportunity to Examine Evidence
- ❑ Not Allowing Employee to Respond
- ❑ Vague Charges

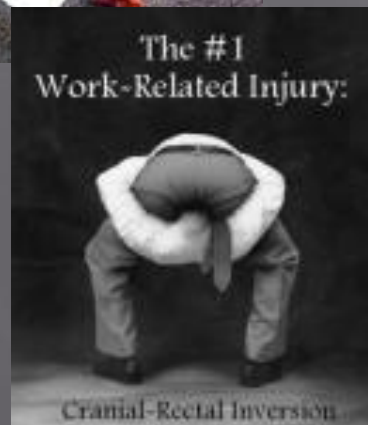
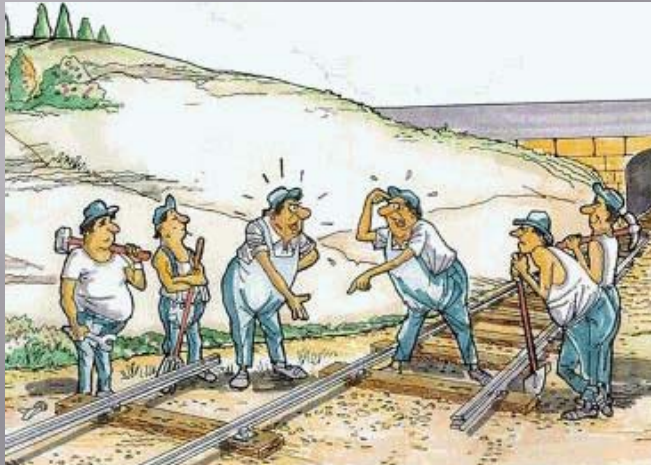






# Ultimate Question

**"Harmful Error"**





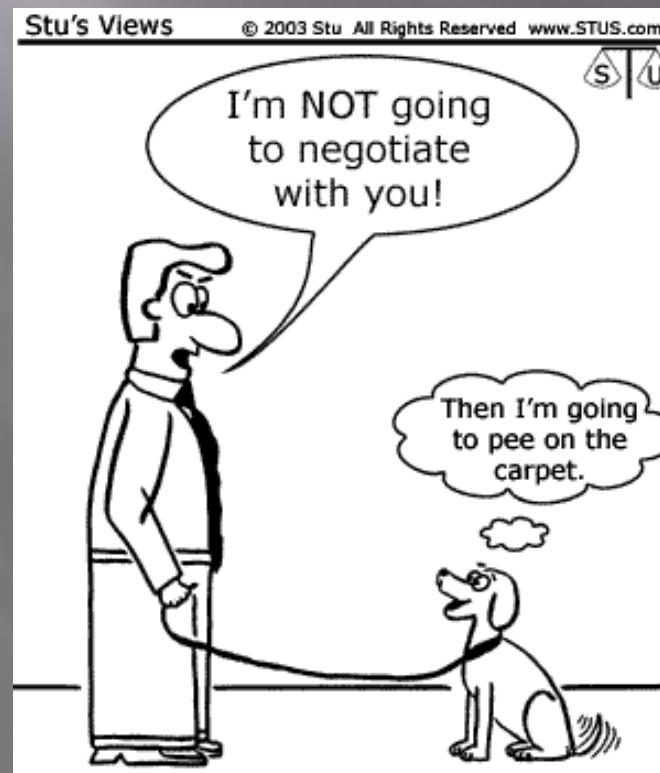
# Error Examples







# Settlements





# Settlements

- Policy reasons for/ against settlement
- Settlement practice
- Problem areas in settlement
- The intersection of labor relations and settlement practice
- Post-settlement issues



# Motions Practice





# Motions Practice

- ▣ What we do
- ▣ Why we do it
- ▣ When we do it
- ▣ What it means for you



# Practical Tips





# Conclusion—Questions?





# DEFENSE AND EMPLOYEE LABOR RELATIONS SYMPOSIUM



Intermediate/ Advanced Employee Relations: Discovery,  
Witness and Evidence Preparation

Phillis Morgan – 703-696-9137; Heather Masten – 210-671-8970

Air Force Legal Operations Agency